

Before the Board of Zoning Adjustment, D, C,

Appeal No. 11908 of Paul Wieck, pursuant to Sections 8102 and 8206 of the Zoning Regulations from a determination by the chief of the Zoning Inspection Branch ordering the removal of items contained in accessory building which by their very nature make the building suitable for human habitation, in the R-3 Zone, Sq. 1255, Lot 845, at the premises 3267 P St., N.W.

HEARING DATE: May 21, 1975

DECISION DATE: May 21, 1975 (From the Bench)

#### SUMMARY OF FACTS

The appellant-owner of the subject property purchased the same in May of 1974. At the time of its purchase the property contained herein is improved by a principal dwelling and a rear accessory building containing electrical and plumbing facilities. On December 2, 1975, the appellant received an order from the Zoning Inspection Branch requiring the plumbing and electrical facilities existing in the rear building to be removed because the facilities make the building suitable for human habitation. The appellant appeals from the determination of issuing the order of removal and raises a further issue that the government should be estopped from ordering such because he purchased the subject property as two (2) dwelling units in good faith without knowledge that the permit which allowed the installation of the facilities in question was in error or issued by mistake

The Board further finds that:

1. The Board finds that the accessory building located on the subject property has been used as habitable space by other than domestic employees of the family living in the main house.
2. The Chief of the Zoning Inspection Branch ordered, appellant to remove the items and plumbing a ~~appurtenant~~ to the accessory building because those items make the building suitable for habitable space.
3. The plumbing and electrical facilities in question were installed pursuant to permit No. B-163502, issued November 15, 1969.
4. The Board takes notice of Section 7601.3 of the Regulations which restricts the use of an accessory building as habitable space only when that use is located on the second story of such building for the purpose of sleeping and living quarters of domestic employees of the family occupying the main house.

5. The record indicates that the permit which allowed the installation of the facilities in question was issued by mistake or misrepresentation,

6. The appellant-owner of the subject property asserts that the Government should be estopped from compelling him to remove the facilities in question, because he purchased the property in good faith believing that the accessory building could be used legally as habitable space, relied on the permit which allowed the installation of the facilities, and obtained financing to purchase the property at a price which reflected the value two dwellings on the subject property.

7. The Board finds that the owner prior to the appellant herein obtained the permit to install the plumbing and electrical facilities in question.

8. It is not clear what transpired during the permit issuing process which allowed the facilities in question to be installed.

9. The applicant failed to present to the Board, the precise measure of injury in dollars and cents which would result from his having to remove the facilities in question.

10. The person who issued permit No. B-163502 was not present to testify concerning the issuance of said permit, nor was the prior owner who obtained the permit.

11. The Board takes notice that it is without the authority to subpoena persons to a hearing or permit discovery by order.

12. The reason as to why permit No. B-163502 was issued allowing the conversion of the accessory building into habitable space is not clearly set out in the record of this case.

#### CONCLUSIONS OF LAW & OPINION

Based upon the above findings of fact, and the record, the Board is of the opinion that issue raised by appellant regarding estoppel is not supported by sufficient facts to enable the Board to decide that issue. Such issue would be decided by weighing the equities of the parties involved, based upon a factual determination by the Board as to the actions of those parties. The record in this case is not clear as to whether or not the permit allowing use of the accessory building was issued in error by the government, or issued by mistake based upon a misrepresentation of the prior owner of the property. The Board concludes that the prior owner

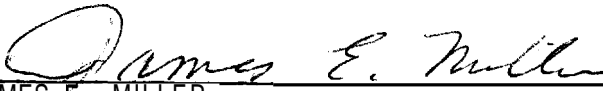
is a necessary party to the fact finding process regarding the issue of estoppel and because the prior owner cannot be compelled to appear before this Board, this equitable issue regarding estoppel cannot be adequately resolved in this forum,

The more narrow issue in this appeal and the basis of it is whether or not Chief of the Zoning Inspection Branch acted properly by giving notice of the illegality relating to the accessory building on the subject property and ordering removal of those items that make the building usable for a purpose not permitted by the regulations. The Board concludes that an accessory building cannot be used as habitable space except as provided by Section 7601.3 of the Zoning Regulations. Therefore, the Board is of the opinion that the determination appealed from herein correct, constituting the performance of a ministerial duty to enforce strict application of the regulations in effort to bring the subject property into compliance with the regulations.

VOTE: 4-0 (Mr. Klauber not present, not voting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
JAMES E. MILLER,  
Secretary to the Board

FINAL DATE OF ORDER:

*Nov. 4, 1975*